

---

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

---

R. C. KLEPPER, doing business under the fictitious  
name of Bethlehem Motor Company,

Plaintiff in Error,

vs.

JOHN P. CARTER, Collector of Internal Revenue,  
Southern District of California,

Defendant in Error.

---

**Transcript of Record.**

---

Upon Writ of Error to the United States District  
Court, for the Southern District of Cal-  
ifornia, Southern Division.

---

**FILED**

JUN 15 1922

**F. D. MONCKTON,**  
CLERK.



No.

---

**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

---

R. C. KLEPPER, doing business under the fictitious  
name of Bethlehem Motor Company,

Plaintiff in Error,

vs.

JOHN P. CARTER, Collector of Internal Revenue,  
Southern District of California,

Defendant in Error.

---

**Transcript of Record.**

---

**Upon Writ of Error to the United States District  
Court, for the Southern District of Cal-  
ifornia, Southern Division.**

---



## INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Agreed Statement of Facts.....	28
Amended Complaint .....	5
Answer .....	11
Assignment of Error.....	15
Bill of Exceptions.....	17
Citation .....	2
Cost Bond .....	36
Judgment .....	13
Names and Addresses of Attorneys .....	1
Order Extending Time.....	25
Petition for Writ of Error.....	35
Praecipe .....	39
Stipulations .....	24
Writ of Error.....	3



**Names and Addresses of Attorneys:**

For Plaintiff in Error:

Hocker & Austin, Esqs., Stock Exchange Building,  
Los Angeles, California.

For Defendant in Error:

Joe Burke, Esq., United States Attorney Robert  
B. Camarillo, Esq., Assistant United States  
Attorney, Federal Building, Los Angeles,  
*California.*

UNITED STATES OF AMERICA, SS.

To John P. Carter, Collector of Internal Revenue,  
Southern District of California, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 28th day of May, A. D. 1922, pursuant to a Writ of Error, filed in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause, wherein R. C. Klepper, doing business under fictitious name of Bethlehem Motors Company, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error, R. C. Klepper, in the said Writ of Error mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable Oscar A. Trippet, United States District Judge for the Southern District of California, this 28th day of April, A. D. 1922, and of the Independence of the United States, the one hundred and forty sixth

Trippet

U. S. District Judge for the Southern District of California.

[Endorsed]: 850 Civ In the United States Circuit Court of Appeals for the NINTH CIRCUIT R. C. Klepper, doing business under fictitious name of Bethlehem Motors Company vs. John P. Carter, Collector



of Internal Revenue, Southern District of California  
Citation Service of copy of within citation is hereby  
acknowledged this 28th day of April, 1922. Robert B  
Camarillo Asst U. S. Atty FILED Apr 28 1922  
CHAS. N. WILLIAMS, Clerk By R. S. Zimmerman  
Deputy Clerk

---

UNITED STATES OF AMERICA, SS.

The President of the United States of America,

To the Judges of the District Court of the United  
States, for the Southern District of California,  
GREETING:

Because in the record and proceedings, and also in  
the rendition of the judgment of a plea which is in  
the said District Court, before you between R. C.  
KLEPPER, doing business under fictitious name of  
BETHLEHEM MOTORS COMPANY, Plaintiff, vs.  
JOHN P. CARTER, Collector of Internal Revenue,  
Southern District of California, Defendant, a manifest  
error hath happened, to the great damage of the said  
R. C. Klepper, Plaintiff, as by his complaint appears,  
and it being fit, that the error, if any there hath been,  
should be duly corrected, and full and speedy justice  
done to the parties aforesaid in this behalf, you are  
hereby commanded, if judgment be therein given, that  
then, under your seal, distinctly and openly, you send  
the record and proceedings aforesaid, with all things  
concerning the same, to the United States Circuit  
Court of Appeals for the Ninth Circuit, together with  
this writ, so that you have the same at the City of  
San Francisco, in the State of California, on the

28th day of May next, in the said United States Circuit Court of Appeals, to be there and then held, that the record and proceedings aforesaid be inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

WITNESS, the HON. WILLIAM H. TAFT,  
Chief Justice of the United States, this 21st  
day of April, in the year of our Lord one  
thousand nine hundred and twenty-two and of  
the Independence of the United States the  
one hundred and forty six.

(Seal)

CHAS N WILLIAMS,  
Clerk of the District Court of the United  
States of America, in and for the South-  
ern District of California.

The above writ of error is hereby allowed.

Trippet                      By R S ZIMMERMAN  
Judge.                      Deputy Clerk.

I hereby certify that a copy of the within Writ of Error was on the 25th day of April, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Southern Division, for said Defendants in Error.

Chas N Williams  
Clerk of the District Court of the United States for  
the Southern District of California.

By R S Zimmerman  
Deputy Clerk.

Approved as to form

R. B. Camarillo,  
Asst. U. S. Atty.

[Endorsed]: United States Circuit Court of Appeals for the NINTH CIRCUIT R. C. KLEPPER, Plaintiff in Error vs. JOHN P. CARTER, Int. Rev. Col. Defendant in Error Writ of Error FILED Apr. 25 1922 CHAS. N. WILLIAMS, clerk By R S Zimmerman Deputy Clerk

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA.

--- oOo ---

R. C. KLEPPER,	)	
doing business under fictitious name	(	
of Bethlehem Motors Co.	)	
	(	
	)	AMENDED
vs.	(	COMPLAINT
	)	FOR MONEY
JOHN P. CARTER,	(	
Collector of Internal Revenue,	)	
Southern District of California,	(	
	)	
Defendant,	(	

--- oOo ---

The plaintiff complains of the defendant and for cause of action alleges:

I.

That the plaintiff R. C. Klepper is a resident of the City of Los Angeles, State of California, and

during all the times hereinafter mentioned plaintiff was doing business under the fictitious name of Bethlehem Motors Co. at and in the County of Los Angeles, State of California.

## II.

That prior to the day and dates hereinafter mentioned plaintiff had in all things complied with provisions of Secs. 2466 and 2468 Civil Code of the State of California by subscribing a certificate stating his name in full and his place of residence which said certificate was duly acknowledged before a Notary Public in and for the County of Los Angeles, State of California, and which said certificate was filed with the County Clerk of Los Angeles County and afterward published once a week for four successive weeks in a newspaper of general circulation published in the said Los Angeles county.

## III.

That the defendant John P. Carter was at the day and date hereinafter mentioned and is now the duly appointed and qualified United States Internal Revenue Collector, for the Southern District of the State of California.

## IV.

That on the 2nd day of January 1920, the defendant as collector aforesaid presented to plaintiff an account for Internal Revenue Taxes which said account set forth a balance due from plaintiff to defendant in the sum of \$108.21.

V.

That the plaintiff, under the statutes in such cases made and provided, on the second day of January, 1920, paid said sum of \$108.21, to the defendant, under protest.

VI.

That in fact no Internal Revenue taxes were due from plaintiff and the defendant, collector as afore-said received said sum for the use of plaintiff.

VII.

That on the 8th day of March 1920, plaintiff filed appeal, by claim for refund of said sum, to the commissioner of Internal Revenue, the same being the claim number 77472; in the office of the commissioner of Internal Revenue; that on the 3rd day of August 1920, the commissioner of Internal Revenue rejected said claim for refund.

VIII.

That plaintiff has demanded from defendant the said sum of 108.21, and the defendant has not paid said sum or any part thereof.

SECOND

And for other and further cause of action against defendant, plaintiff alleges:

I.

Plaintiff re-alleges the allegations set forth in paragraphs I. II. and III. of the First Count herein, the same as if repeated herein:

## II.

That on the 2nd day of January 1920, the defendant as collector aforesaid presented to plaintiff an account for Internal Revenue taxes which said account set forth a balance due from plaintiff to defendant in the sum of \$297.19.

## III.

That the plaintiff, under the statutes in such cases made and provided, on the second day of January, 1920, paid said sum of \$297.19.

## IV.

That in fact no Internal Revenue taxes were due from plaintiff and the defendant, collector as aforesaid received said sum for the use of plaintiff.

## V.

That on the 8th day of March 1920, plaintiff filed appeal, by claim for refund of said sum, to the commissioner of Internal Revenue, the same being the claim number 77506, in the office of the commissioner of Internal Revenue; that on the 3rd day of August 1920, the commissioner of Internal Revenue rejected said claim for refund.

## VI.

That plaintiff has demanded from defendant the said sum of \$297.19, and the defendant has not paid said sum or any part thereof.

## THIRD

And for other and further cause of action against defendant plaintiff alleges:



I.

Plaintiff re-alleges the allegations set forth in paragraph I. II. and III. of the First Count herein the same as if repeated herein.

II.

That on the 2nd day of January 1920, the defendant as collector aforesaid presented to plaintiff an account for Internal Revenue taxes which said account set forth a balance due from plaintiff to defendant in the sum of \$58.77.

III.

That the plaintiff, under the statutes in such cases made and provided, on the second day of January 1920, paid said sum of \$58.77.

IV.

That in fact no Internal Revenue taxes were due from plaintiff and defendant, collector as aforesaid received said sum for the use of the plaintiff.

V.

That on the 8th day of March 1920, plaintiff filed appeal, by claim for refund of said sum, to the commissioner of Internal Revenue, the same being the claim number 77469, in the office of the commissioner of Internal Revenue; that on the 3rd day of August 1920, the commissioner of Internal Revenue rejected said claim for refund.

VI.

That plaintiff has demanded from defendant the said sum of \$58.77, and the defendant has not paid said sum or any part thereof.

Wherefore, plaintiff demands judgment against the defendant collector, on his First Count, in the sum of \$108.21; and on his Second Count the sum of \$297.19; and on his Third Count the sum of \$58.77; making a total of \$464.17, and that plaintiff recover costs of suit.

Hocker &amp; Austin

Attorneys for Plaintiff

[illegible]

R. C. Klepper being first duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that he has read the foregoing Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

R. C. Klepper

Subscribed and sworn to before me  
this 30 day of Nov 1920.

Robert E. Austin

Notary Public in and for the County  
of Los Angeles, State of California.  
(Seal)

[Endorsed]: No. 850 Dept. IN THE UNITED STATES DISTRICT COURT FOR THE SOUTH-



ERN DISTRICT OF CALIFORNIA R. C. KLEPPER, doing business under fictitious name of BETHLEHEM MOTORS CO. Plaintiff, vs. JOHN P. CARTER, Collector of Internal Revenue, Southern District of California, Defendant, AMENDED COMPLAINT FOR MONEY Received copy of the within Am. Compl't this 2nd day of December 1920 Milton Bryan Attorney for Defendant Hocker & Austin 422 I. W. Hellman Bldg. Los Angeles, Calif. FILED Dec 2 1920 CHAS. N. WILLIAMS, Clerk By P. W. Kerr Deputy Clerk.

---

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION.

R. C. KLEPPER, doing business )  
under fictitious name of Bethlehem  
Motors Co., (

Plaintiff, )

vs.

( ANSWER.

JOHN P. CARTER, Collector of )  
Internal Revenue, Southern District  
of California, (

Defendant. )

- - - - -

Comes now the defendant in the above entitled cause, and in answer to plaintiff's Amended Complaint filed herein, says that no allegation thereof is true.

Defendant answering the first cause of action contained in the Amended Complaint herein, denies each and every allegation of the Amended Complaint respecting the same.

Defendant answering the second cause of action contained in the Amended Complaint herein, denies each and every allegation of the Amended Complaint respecting the same.

Defendant, answering the third cause of action contained in the Amended Complaint herein, denies each and every allegation of the Amended Complaint respecting the same.

Robert O'Connor

---

United States Attorney.

Milton Bryan

---

Assistant United States Attorney

Attorneys for Defendant.

[Endorsed]: No. 850 Civil. IN THE District COURT OF THE UNITED STATES for the SOUTHERN DISTRICT of CALIFORNIA. SOUTHERN DIVISION. R. C. KLEPPER, doing business under the fictitious name of Bethlehem Motors Co Plaintiff. vs. JOHN P. CARTER, Collector of Internal Revenue, Southern District of California, Defendant. ANSWER. Received one copy of the with-in Answer this 13th day of December, 1920. Hocker & Austin Attorneys for Plaintiff. FILED Dec 13 1920. CHAS. N. WILLIAMS, Clerk By Wm U. Handy Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED  
STATES IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION.

R. C. KLEPPER, doing business )	
under the fictitious name of Bethle- )	
hem Motors Co., )	850 Civil
)	
Plaintiff, )	
)	
-vs- )	JUDGMENT.
)	
JOHN P. CARTER, Collector of )	
Internal Revenue, Southern District )	
of California, )	
)	
Defendant. )	

This cause came on regularly before the Court for trial on the 7th day of February, 1922, plaintiff appearing by Messrs. Hocker and Austin, his attorneys, and the defendant appearing by Joseph C. Burke, Esq., United States Attorney, and Robert B. Camarillo, Esq., Assistant United States Attorney, his attorneys, and a jury trial having been waived by the parties, the case was submitted to the Court for decision upon an agreed statement of facts and the briefs on file and to be filed, and the Court having given due consideration to the facts and the law therein,

IT IS ORDERED, ADJUDGED AND DECREED  
that the said cause be and the same is hereby dis-

missed, and that the defendant recover from the plaintiff his costs incurred in this action, taxed at \$14.55.

Dated April 12, 1922.

Trippet

---

Judge.

Approved as to form.

J. W. Hocker

---

Attorney for Plaintiff.

[Endorsed]: No. 850 Civil IN THE DISTRICT COURT OF THE UNITED STATES For The Southern District of California Southern Division R. C. KLEPPER, etc. vs. JOHN P. CARTER, etc. JUDGMENT. Filed April 12, 1922. Chas N Williams, Clerk. By Louis J. Somers, Deputy. Hocker & Austin

IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

---

R. C. KLEPPER,	)	
doing business under fictitious :		
name of BETHLEHEM MO-	)	No. 850-Civil.
TORS COMPANY,	:	
	)	
Plaintiff,	:	ASSIGNMENT
	)	
vs.	:	OF ERROR.
	)	
JOHN P. CARTER,	:	
Collector of Internal Revenue )		
SOUTHERN DISTRICT OF :		
CALIFORNIA,	)	
	:	
Defendant.	)	

Comes now R. C. Klepper, doing business under the fictitious name of Bethlehem Motors Company, plaintiff in the above entitled cause, and files the following Assignments of Error upon which he relies in his prosecution of a Writ of Error in the above entitled cause; petition for which said Writ of Error to review the judgment of this Honorable Court, made and entered in said cause on the        day of April, 1922, filed at the same time with this Assignment of Error.

ASSIGNMENT No. 1.

That the decision of the Court is not sustained by sufficient evidence.

## ASSIGNMENT No. 2.

That the decision of the Court is contrary to the evidence.

## ASSIGNMENT No. 3.

That the decision of the Court is contrary to law.

And upon the foregoing Assignments of Error and the record in said cause, the plaintiff prays that said judgment may be reversed.

J. W. Hocker

Robert E. Austin

Attorneys for Plaintiff.

[Endorsed]: No. 850 - Civil R. C. Klepper etc, Plaintiff vs. John P. Carter, etc, Defendant ASSIGNMENT OF ERROR FILED Apr 21 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

---

R. C. KLEPPER,	)	
doing business under fictitious :		
name of BETHLEHEM MO-	)	No. 850-Civil.
TORS CO.,	)	
	:	
	)	
	:	
	)	BILL OF
vs.	)	<u>          </u>
	:	EXCEPTIONS.
	)	<u>                                </u>
JOHN P. CARTER,	)	
Collector of Internal Revenue :		
SOUTHERN DISTRICT OF )		
CALIFORNIA,	)	
	:	
Defendant.	)	

BE IT REMEMBERED:

That the above entitled cause was submitted to the Court upon a brief Statement of Facts filed in said cause, which said Statement of Facts is in words and figures as follows, to-wit:

It is hereby stipulated by and between J. W. Hocker, and Robert E. Austin, Attorneys for the plaintiff, and the United States Attorney, Attorney for the defendant, that the above entitled cause may be submitted to the decision of the Court upon the following statement of facts:

“That during the year 1919, R .C . Klepper, a resident of the City of Los Angeles, California, as an



individual, was doing business at No. 1326 South Main Street, in the City of Los Angeles, under the name and style, Bethlehem Motors Company of Southern California, a fictitious name, and such was duly advertised, recorded and registered as provided and required by sections 2466, and 2468 of the Civil Code of the State of California.

“That commencing with the month of July, and afterward, during said year of 1919, said R. C. Klepper was engaged in the business of selling Automobile Trucks.

“That the Bethlehem Motors Corporation, a corporation having its offices and place of business at Allentown in the State of Pennsylvania, was prior to and during said year of 1919, a manufacturer of Automobile Trucks, at Allentown Pennsylvania, and as such issued an illustrated Catalogue and price list, to dealers in automobile trucks.

“That said catalogue illustrated and listed Chassis, complete in all its details and accessories, engine, radiator, clutches, transmission, electric starting and lighting, ready for the road.

“That said Bethlehem Motors Corporation, manufacture and also issued separate catalogue and price list of truck bodies, giving price of bodies, separate and apart from the catalogue and price list of Chassis. That such bodies consist of iron braced, wood frame structures, both with and without tops.

“That said Bethlehem Motors Company, and many other companies and individuals, sell chassis, separate



from the body and sell bodies separate from the chassis.

"That the Weber Auto Body and Trailor Works, located at 688 North Spring Street, City of Los Angeles, State of California, manufacture Auto Truck Bodies, for the trade during the year 1919, and since, listing various designs, and said Weber Auto Body and Trailor Works did not manufacture the chassis or any chassis or part thereof, for use in Auto Trucks, their business being solely manufacturers of bodies for automobiles and motor trucks.

"That from July to November 1st, 1919, said R. C. Klepper bought said Bethlehem Motors Corporation Seven Chassis, and said Bethlehem Motors Corporation, manufactured and produced said Chassis, complete, and shipped the same to Los Angeles, and after *receiving* said trucks, said R. C. Klepper sent the same over to the works of the Weber Auto Body and Trailor Works, at its factory and workshops, and then purchased from said Weber Auto Body and Trailor Works, seven bodies for the said seven Chassis, and said Weber Auto Body and Trailor Works, manufactured and produced said truck bodies and placed them upon the aforesaid Chassis.

"That said R. C. Klepper paid the War Tax of three per centum on the price paid to the Bethlehem Motors Corporation, to said Corporation, amounting to \$385.19, and paid to said Weber Auto Body and Trailor Works, the War tax of five per centum on the price paid them for said bodies, amounting to the sum of \$49.25.

“That said R. C. Klepper sold said Motor Trucks, together with said bodies thereon, for the total sum of \$22,015.05.

“That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper to pay war tax of three per centum, based on said gross sales price aforesaid, less the War tax paid to the manufacturer of the Chassis and the manufacturer of the bodies, which amount so paid by said R. C. Klepper to said John P. Carter amounted to \$297.19.

“That during the month of November, 1919, said R. C. Klepper purchased four Chassis, from the same party and in the same form, and purchased four bodies from said Body Works under the same circumstances; that said Klepper paid to the Bethlehem Motors Corporation, war tax on said purchase, the sum of \$172.58, and paid to said Body Works, the sum of \$24.50.

“That said R. C. Klepper sold said auto trucks, together with said bodies thereon for the total sum of \$9,776.25.

“That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper, to pay War tax of three per centum, based upon the said gross sales price, aforesaid, less the amounts paid to the manufacturer of the Chassis and the manufacturer of the bodies, which amount so paid by said R. C. Klepper to said John P. Carter amounted to \$108.21

“That during the month of December, 1919, said R. C. Klepper purchased two Chassis from the same party and in the same form, and purchased two bodies from the same Body Works, under the same circumstances; that said Klepper paid to the Bethlehem Motors Corporation war tax on said purchase, the sum of \$99.34, and paid to said Body Works, war tax in the sum of \$18.75.

“That said R. C. Klepper sold said two auto trucks, together with the bodies thereon for the total sum of \$5915.00.

“That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper to pay war tax of three per centum, based upon the gross sales price aforesaid, less the amounts paid to the manufacturer of the *Chasis* and the manufacturer of the Bodies, which amount so paid by said R. C. Klepper to said John P. Carter, amounted to the sum of \$58.75.

“That said R. C. Klepper duly filed and presented application for Abatement of said taxes in manner and for as by the Regulations established by the Secretary of the Treasury in such cases made and provided, and said application was denied. That after payment of said taxes said R. C. Klepper duly filed and presented, in manner and form required by the Regulations so established, a “Claim for Refund” of said tax, claimed by him, the said R. C. Klepper to have been erroneously and illegally collected, and said Claim for Refund was by the Commissioner of In-

ternal Revenue, rejected by letter of date August 20th, 1920, the original of which is herewith exhibited for consideration by the Court, of which the following is a copy:

“Office of  
COMMISSIONER OF INTERNAL REVENUE

---

TREASURY DEPARTMENT  
WASHINGTON

Address Reply to August 20, 1920  
Commissioner of Internal Revenue  
And Refer To  
ST-DSB.

Cls. 77506, 77469 & 77472-Rej.  
Bethlehem Motors Company of Southern California,  
1326 South Main Street,  
Los Angeles, Calif.

Gentlemen:

Your three claims numbered 77506, 77469 and 77472 for the refund of \$297.19, \$58.77 and \$108.21 respectively, tax paid on the sales of automobiles, have been carefully considered.

From the evidence submitted, it appears that all of these taxes were paid by you on the sale of automobile trucks; that you purchased the chassis from the manufacturer and afterward you caused another manufacturer to build a body and place it upon each chassis; and then you sold the completed trucks to your customers.

You are advised that you are a manufacturer within the meaning of the law and are liable for the tax on the completed trucks when sold, less the amount of any tax on the chassis and bodies which you reimbursed to the manufacturers of these parts.

These taxes were properly paid and therefore your claims are rejected.

Your receipts for these taxes are returned herewith.

Respectfully,

Wm. M. Williams

Commissioner.

MEP

cc Los Angeles, Calif,

Incl-8293

"That said R. C. Klepper, in manner and form and according to the provisions of law in that regard, and the Regulations of the Secretary of the Treasury, established in pursuance thereof, duly appealed to the Commissioner of Internal Revenue from the denial and rejection of said Claims of R. C. Klepper, and relief on appeal was denied.

Robert O'Connor

---

United States Attorney  
By Milton Bryan Asst Dis. Atty

---

Hocker and. Austin

---

Attorneys for R. C. Klepper."

[Endorsed]: "Filed Sept 27 - 1921 Chas. N. Williams Clerk By Edmund L. Smith, Deputy Clerk"



IN THE DISTRICT COURT OF THE UNITED  
STATES, IN AND FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA,  
SOUTHERN DIVISION.

R. C. KLEPPER, doing business )	
under the fictitious name of )	
Bethlehem Motors Co., )	
Plaintiff )	
vs. )	STIPULATIONS
JOHN P. CARTER, Collector of )	
Internal Revenue, Southern Dis- )	
trict of California, )	
Defendant. )	

IT IS HEREBY STIPULATED:

That the following shall be inserted in the Plaintiff's Proposed Bill of Exceptions, in the above entitled cause:

"That the Exhibits attached to the Supplemental Stipulations, filed in this cause, of date February 10th, 1922, being photographic copies of the records in the Interior Department were deemed by the court as detail of the agreed Statement of Facts, theretofore filed herein, and immaterial and the same were not considered by the court in determining this cause; but being willing that the Appellate Court should be fully advised in the premises, IT IS ORDERED that said photographic copies become a part of the Record in this cause, and said original Exhibits and not copies thereof, be transmitted to the Appellate Court, with

the Transcript and return to the Writ of Error in said cause."

Hocker and Austin  
Attorneys for Plaintiff,  
Robert B. Camarillo,  
Asst U. S. Atty  
Attorneys for Defendant.

TO: United States Attorney, as Attorney for the Defendant above named,

Pursuant to a suggestion of the court in the settlement of the Bill of Exceptions in this cause we hereby tender to you the foregoing stipulation.

April 27th, 1922.

Hocker and Austin  
Attorneys for Plaintiff.

[Endorsed]: FILED Apr 27 1922 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk.

---

IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

---

R. C. KLEPPER,	)	
doing business under fictitious :		
name of BETHLEHEM MO-	)	No. 850-Civil.
TORS COMPANY,	:	
	:	
Plaintiff,	)	ORDER
	:	EXTENDING
vs.	)	TIME FOR
	:	BILL OF
JOHN P. CARTER,	)	EXCEPTIONS.
Collector of Internal Revenue :		
SOUTHERN DISTRICT OF )		
CALIFORNIA,	:	
Defendant.	)	

That on Monday, the 27th day of March, 1922, in open court it was ordered that the plaintiff may have sixty days from and after said date in which to prepare, serve and file a proposed Bill of Exceptions in said case.

“STIPULATION”

It is STIPULATED by and between the parties hereto that the above and foregoing Bill of Exceptions may be signed and settled as the Bill of Exceptions in this cause.

Dated April       , 1922.

J. W. Hocker

---

Robert E. Austin

---

Attorneys for Plaintiff

---

Attorneys for Defendant.

The foregoing Bill of Exceptions contains all of the evidence offered and introduced at the trial of this cause, necessary to a review of the said cause on Writ of Error, and is a true and correct Bill of Exceptions, and the time for filing plaintiff's proposed Bill of Exceptions and defendant's amendment thereto and for settling of said Bill of Exceptions having been duly extended by the Court, said Bill of Exceptions is hereby settled and allowed and ordered filed. Consideration of the evidence of this cause made it necessary to review the said cause on Writ of Error.



Dated this 27th day of April, 1922.

Trippet

---

Judge.

[Endorsed]: No. 850 - Civil IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DISTRICT. R. C. KLEPPER, doing business under fictitious name of BETHLEHEM MOTORS COMPANY, Plaintiff, vs JOHN P. CARTER, Collector of Internal Revenue SOUTHERN DISTRICT OF CALIFORNIA Defendant. BILL OF EXCEPTIONS. Received copy of the within Bill of Exceptions this 6th day of April, 1922. Robt B Camarillo Attorneys for Defendant. Lodged Apr 21 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk Settled Bill FILED Apr 27 1922 CHAS. N. WILLIAMS, Clerk By Edmund L. Smith Deputy Clerk Hocker & Austin Attys-aLaw 829 L. A. Stock Exchange Bldg., Los Angeles, Calif. Bdwy. 1236.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT  
OF CALIFORNIA

-- oOo --

R. C. KLEPPER,	)	
doing business under fictitious	(	
name of BETHLEHEM MO-	)	
TORS CO.	(	
	)	
	Plaintiff, (	
	)	STIPULATIONS
vs.	(	AND AGREED
	)	STATEMENT
JOHN P. CARTER,	(	OF FACTS
Collector of Internal Revenue	)	
SOUTHERN DISTRICT OF	(	
CALIFORNIA,	)	
	Defendant, (	
	)	
		-- oOo --

It is hereby stipulated by and between J. W. Hocker, and Robert E. Austin, Attorneys for the plaintiff, and the United States Attorney, Attorney for the defendant, that the above entitled cause may be submitted to the decision of the Court upon the following statement of facts:

That during the year 1919, R. C. Klepper, a resident of the City of Los Angeles, California, as an individual, was doing business at No. 1326 South Main Street, in the City of Los Angeles, under the name and style, Bethlehem Motors Company of Southern California, a fictitious name, and such was duly advertised, recorded and registered as provided and

required by Sections 2466, and 2468, of the Civil Code of the State of California,

That commencing with the month of July, and afterward, during said year of 1919, said R. C. Klepper, was engaged in the business of selling Automobile Trucks.

That the Bethlehem Motors Corporation, a corporation having its offices and place of business at Allentown in the State of Pennsylvania, was prior to and during said year of 1919, a manufacturer of Automobile Trucks, at Allentown Pennsylvania, and as such issued an illustrated Catalogue and price list, to dealers in automobile trucks.

That said catalogue illustrated and listed Chassis, complete in all its details and accessories, engine, radiator, clutches, transmission, electric starting and lighting, ready for the road.

That said Bethlehem Motor Corporation, manufacture and also issued separate catalogue and price list of truck bodies, giving price of bodies, separate and apart from the catalogue and price list of Chassis. That such bodies consist of iron braced, wood frame structures, both with and without tops.

That said Bethlehem Motors Company, and many other companies and individuals, sell chassis, separate from the body and sell bodies separate from the chassis.

That the Weber Auto Body and Trailer Works, located at 688 North Spring Street, City of Los Angeles, State of California, manufacture Auto Truck Bodies,

for the trade, during the year 1919, and since, listing various designs, and said Weber Auto Body and Trailor Works, did not manufacture the chassis, or any chassis or part thereof for use in Auto Trucks, their business being solely manufacturers of Bodies for Automobiles and Motor Trucks.

That from July to November 1st, 1919, said R. C. Klepper bought of said Bethlehem Motors Corporation Seven Chassis, and said Bethlehem Motors Corporation, manufactured, and produced said Chassis, complete, and shipped the same to Los Angeles, and after receiving said trucks, said R. C. Klepper sent the same over to the works of the Weber Auto Body and Trailor Works, at its factory and workshops, and then purchased from said Weber Auto Body and Trailor Works, seven bodies for the said seven Chassis, and said Weber Auto Body and Trailor Works, manufactured and produced said truck bodies and placed them upon the aforesaid Chassis.

That said R. C. Klepper, paid the War Tax, of three per centum on the price paid to the Bethlehem Motors Corporation, to said Corporation, amounting to \$385.19, and paid to said Weber Auto Body and Trailor Works, the War tax, of five per centum, on the price paid them for said Bodies, amounting to the sum of \$49.25.

That said R. C. Klepper, sold said Motor Trucks, together with said bodies, thereon, for the total sum of \$22,015.05.

That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper, to pay War Tax of three per centum, based on said gross sales price, aforesaid, less the War tax paid to the manufacturer of the Chassis and the manufacturer of the bodies, which amount so paid by said R. C. Klepper to said John P. Carter amounted to \$297.19.

That during the month of November, 1919, said R. C. Klepper purchased Four Chassis, from the same party and in the same form, and purchased four bodies, from said Body Works, under the same circumstances; That said Klepper paid to the Bethlehem Motors Corporation, war tax on said purchase the sum of \$172.58, and paid to said Body Works, the sum of \$24.50.

That said R. C. Klepper, sold said auto trucks, together with said bodies thereon for the total sum of \$9,776.25.

That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper, to pay War tax of three per centum, based upon the said gross sales price, aforesaid, less the amounts paid to the manufacturer of the Chassis and the manufacturer of the bodies, which amount so paid by said R. C. Klepper to said John P. Carter amounted to \$108.21.

That during the month of December 1919, said R. C. Klepper purchased two Chassis from the same party and in the same form, and purchased two bodies from the same Body Works, under the same circumstances;



that said Klepper paid to the Bethlehem Motors Corporation, War tax on said purchase, the sum of \$99.34, and paid to said Body Works, War tax in the sum of \$18.75.

That said R. C. Klepper, sold said two auto trucks, together with the bodies thereon for the total sum of \$5915.00.

That the Collector of Internal Revenue, John P. Carter, demanded of and compelled said R. C. Klepper to pay War tax of three per centum, based upon the gross sales price aforesaid, less the amounts paid to the manufacturer of the Chassis and the manufacturer of the Bodies, which amount so paid by said R. C. Klepper to said John P. Carter, amounted to the sum of \$58.75.

That said R. C. Klepper, duly filed and presented application for Abatement of said Taxes in manner and form as by the Regulations established by the Secretary of the Treasury in such cases made and provided, and said application was denied. That after payment of said Taxes, said R. C. Klepper, duly filed and presented, in manner and form required by the Regulations so established, a "Claim For Refund" of said Tax, claimed by him, the said R. C. Klepper, to have been erroneously and illegally collected, and said Claim For Refund, was by the Commissioner of Internal Revenue, rejected, by letter of date August 20th 1920, the original of which is herewith exhibited, for consideration by the Court, of which the following is a copy:

Office of  
COMMISSIONER OF INTERNAL REVENUE  
TREASURY DEPARTMENT  
WASHINGTON

---

August 20, 1920

Address Reply to  
Commissioner of Internal Revenue  
And Refer To  
ST-DSB.

Cls. 77506, 77469 & 77472-Rej.  
Bethlehem Motors Company of Southern California,  
1326 South Main Street,  
Los Angeles, Calif.

Gentlemen:

Your three claims Numbered 77506, 77469 and 77472, for the refund of \$297.19, \$58.77 and \$108.21, respectively, tax paid on the sales of automobiles, have been carefully considered.

From the evidence submitted, it appears that all of these taxes were paid by you on the sale of automobile trucks; that you purchased the chassis from the manufacturer and afterward you caused another manufacturer to build a body and place it upon each chassis; and then you sold the completed trucks to your customers.

You are advised that you are a manufacturer within the meaning of the law and are liable for the tax on the completed trucks when sold, less the amount of any tax on the chassis and bodies which you reimbursed to the manufacturers of these parts.

These taxes were properly paid and therefore your claims are rejected.

Your receipts for these taxes are returned herewith.

Respectfully,

Wm. M. Williams

Commissioner.

MEP

cc Los Angeles, Calif.

Incl-8293.

That said R. C. Klepper, in manner and form and according to the provisions of law in that regard, and the Regulations of the Secretary of the Treasury, established in pursuance thereof, duly appealed to the Commissioner of Internal Revenue from the denial and rejection of said Claims of R. C. Klepper, and relief on appeal was denied.

Robert O'Connor

---

United States Attorney

By Milton Bryan, Asst. U. S. Atty.

J. W. Hocker and Robert E. Austin

---

Attorneys for R. C. Klepper

[Endorsed]: No. 850 - Civil R. C. Klepper, etc  
vs. John P. Carter, Collector of Internal Revenue etc.  
Agreed Statement of Facts FILED Sept 27 1921  
CHAS. N. WILLIAMS, Clerk By Edmund L. Smith  
Deputy Clerk



IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

R. C. KLEPPER,	)	
doing business under fictitious name :		
of BETHLEHEM MOTORS )	No. 850-Civil.	
COMPANY,	:	
	)	
	Plaintiff,	: PETITION
	)	FOR WRIT OF
vs.	:	ERROR.
	)	
JOHN P. CARTER,	:	
Collector of Internal Revenue )		
SOUTHERN DISTRICT OF :		
CALIFORNIA,	)	
	:	
	Defendant.	)

The plaintiff, R. C. Klepper, doing business under the fictitious name of Bethlehem Motors Company, feeling himself aggrieved by the decision and judgment of the Court, entered on the       day of April, 1922, comes now by his attorneys, Hocker & Austin, and files herewith an Assignment of Errors and hereby petitions said Court for an Order allowing said plaintiff to procure a Writ of Error to the Honorable, the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and that upon the filing of said Writ of Error in the clerk's office of the United States District Court for

the Southern District of California, Southern Division, at Los Angeles, California, all further proceedings in this Court be suspended and stayed, until the termination of said Writ of Error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioner will every pray.

Dated April 21", 1922.

J W Hocker

---

Robert E. Austin

---

Attorneys for Plaintiff.

[Endorsed]: No.-850 Civil R. C. Klepper etc, Plaintiff vs. John P. Carter, etc, Defendant, PETITION FOR WRIT OF ERROR. Received copy of within this 21st day of April 1922 Jos. C. Burke U. S. Attorney Per Robt B Camarillo Asst FILED Apr 21 1922 CHAS. N. WILLIAMS, Clerk By R S Zimmerman Deputy Clerk

In The District Court of the United States, District of California Southern Division, at Los Angeles.

R. C. Klepper, doing business under fictitious name of Bethlehem Motors Company, Plaintiff vs. John P. Carter, Collector of Internal Revenue, Southern District of California, Defendant No. 850 - Civil

### COST BOND ON WRIT OF ERROR

KNOW ALL MEN, By These Presents:

That we the National Surety Company, a corporation under the laws of the State of New York, are held and firmly bound unto John P. Carter, Collector

of the Internal Revenue, Southern District of California, and his successors in office, in the full and just sum of Two Hundred and Fifty Dollars, to be paid to the said John P. Carter, Collector of Internal Revenue, Southern District of California, and to his successor or successors in office, or assigns, to which payment, well and truly to be made we bind ourselves, our successors jointly and severally by these presents.

Sealed with our seal, and the Seal of said corporation, and dated this 28th day of April 1922.

Whereas, lately at the January term of the United States District Court, in and for the Southern District of California, Southern Division, at Los Angeles, in a suit depending in said court between R. C. Klepper, doing business under fictitious name of Bethlehem Motors Company, plaintiff and John P. Carter, Collector of Internal Revenue, Southern District of California, defendant, judgment was rendered against the said R. C. Klepper, plaintiff above named, and the said plaintiff has obtained a Writ of Error, directed to said Court, to reverse the judgment in the aforesaid suit and a citation directed to the said John P. Carter, Collector of Internal Revenue, Southern District of California, citing and admonishing said defendant to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit at the City of San Francisco, California, thirty days from and after the date of said citation;

Now, The condition of the above obligation is such that if the said R. C. Klepper, plaintiff above named,

NATIONAL SURETY COMPANY

By Catesby C Thom

ITS ATTORNEY IN FACT.

Examined and recommended for approval as provided in rule 29,

J. W. Hocker

Attorney.

I hereby approve the foregoing bond, dated this  
28 April A. D. 1922.

Trippet

STATE OF CALIFORNIA) ) ss  
County of Los Angeles, )

On this 28th day of April in the year one thousand nine hundred and 22, before me MYRTLE E. DITTMAN, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared CATESBY C. THOM, known to me to be the duly authorized Attorney in Fact of NATIONAL SURETY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney in Fact of said Company, and the said CATESBY C. THOM, acknowledged to me that he subscribed the name of NATIONAL SURETY COMPANY thereto as principal, and his own name as Attorney in Fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

Myrtle E. Dittman

Notary Public in and for Los Angeles County, State of California.

[Attorney in Fact]

(Seal)

[Endorsed]: No. 850- Civil. R. C. Klepper, doing business under fictitious name, Bethlehem Motors Co. Plaintiff vs. John P. Carter, Collector Internal Revenue, Southern District California, Defendant BOND ON WRIT OF ERROR FILED Apr 28 1922 CHAS. N. WILLIAMS clerk By R S Zimmerman Deputy Clerk

---

UNITED STATES OF AMERICA

---

District Court of the United States  
SOUTHERN DISTRICT OF CALIFORNIA

---

R. C. Klepper, doing business under the fictitious name of Bethlehem Motor Company, Plaintiff	}	CLERK'S OFFICE.
John P. Carter, Collector Internal Revenue, Southern District California, Defendant		No. 850-Civil
	}	PRAECIPE

---

TO THE CLERK OF SAID COURT:

Sir:

Please issue Certified Transcript of the Record on Writ of Error, to contain the following:

Amended Complaint,

Answer

Judgment

Bill of Exceptions

Agreed Statement of Facts, filed September 27th,  
1921

Petition for Writ of Error,

Assignment of Errors

Writ of Error, together with endorsement of allowance thereof

Citation, with endorsement of service

Bond on Writ of Error, and of

This Praecipe.

Your attention is respectfully called to the Bill of Exceptions, at page 5½, thereof, ordering certain Photographic copies attached to Supplemental Stipulations, filed February 10th, 1922, be transmitted to the Appellate Court - - -

You are requested that the original Copies, as referred to, be transmitted to the Circuit Court of Appeals, with the Transcript in this cause, as well as the original of the Writ of Error, and Citation.

J. W. Hocker and

Robert E. Austin

Attorneys for Plaintiff

[Endorsed]: No. 850 - Civil U. S. District Court  
SOUTHERN DISTRICT OF CALIFORNIA R. C. Klepper,  
doing business under the fictitious name Bethlehem  
Motor Company, Plaintiff vs John P. Carter, Collector  
Internal Revenue, Southern District California. De-  
fendant. PRAECIPE FOR Transcript of Record,  
FILED Apr 29 1922 CHAS. N. WILLIAMS, Clerk.  
By Edmund L. Smith Deputy Clerk.



IN THE DISTRICT COURT OF THE UNITED  
STATES, SOUTHERN DISTRICT OF  
CALIFORNIA, SOUTHERN  
DIVISION.

R. C. KLEPPER, doing business )	
under the fictitious name of Beth-	)
lehem Motor Company,	)
Plaintiff,	)
vs.	) CLERK'S
JOHN P. CARTER, Collector In-	) CERTIFICATE.
ternal Revenue, Southern District	)
California,	)
Defendant.	)

I, CHAS. N. WILLIAMS, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 42 pages, numbered from 1 to 42 inclusive, to be the transcript of record on writ of error in the above entitled cause, as printed by plaintiff in error, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, amended complaint, answer, judgment, bill of exceptions, agreed statement of facts, filed Sept. 27th, 1921, petition for writ of error, assignment of errors, writ of error, together with endorsement of allowance thereof, bond on writ of error and praecipe.

I DO FURTHER CERTIFY that the fees of the clerk for comparing, correcting and certifying the foregoing record on writ of error amount to

and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this            day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-one, and of our Independence the One Hundred and Forty-sixth.

CHAS. N. WILLIAMS,  
Clerk of the District Court of the  
United States of America, in and  
for the Southern District of California.

By

Deputy.